

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 7**

MICHIGAN LABORERS' DISTRICT
COUNCIL, AN AFFILIATE OF THE
LABORERS' INTERNATIONAL UNION
OF NORTH AMERICA, AFL-CIO

CASE NO. 07-CD-221111

and

RAM CONSTRUCTION SERVICES OF
MICHIGAN, INC.

and

LOCAL 324, INTERNATIONAL UNION OF
OPERATING ENGINEERS, AFL-CIO

and

LOCAL 2, INTERNATIONAL UNION OF
BRICKLAYERS & ALLIED CRAFTWORKERS
(BAC), AFL-CIO

and

LOCAL 149, UNITED UNION OF ROOFERS,
WATERPROOFERS & ALLIED WORKERS, AFL-
CIO

and

MICHIGAN REGIONAL COUNCIL OF
CARPENTERS, UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMERICA,
AFL-CIO

**MICHIGAN REGIONAL COUNCIL OF CARPENTERS, UNITED
BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO
POST-HEARING BRIEF**

BACKGROUND

A.) Amended Notice of Hearing and Statement of Dispute

On July 13, 2018, the Michigan Regional Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, received by e-mail the amended notice of hearing, which stated the following dispute:

The operation of all power-driven or power-generating construction equipment used in the building or alteration of all structures and engineering works in building, heavy construction and residential work, for the erection, operation, and maintenance of all hoisting and portable equipment, installation and operation of well point systems and freeze-pipe systems, involving the job performed by Ram Construction Services of Michigan, Inc., at its Detroit Free Press restoration job site located at 321 West Lafayette Blvd., Detroit, Michigan.

(Ex 1(j)(l)).

The disputed work as stated in the Amended Notice is restricted to specific forms of operation of power-driven or power-generated construction equipment at the Employer's job site at 321 West Lafayette Blvd, Detroit, MI ("Old Detroit Free Press Jobsite").

MRCC did not receive a copy of the original notice of hearing until the first day of the 10(k) trial. In the original notice of hearing, a broader location was used. For whatever reason (as the MRCC was not a party at this time) the Amended Notice of Hearing was issued and limited the geographic scope to the Old Detroit Free Press Jobsite. MRCC relied on the Amended Notice of Hearing and the limited geographical area.

B.) Motion for Removal as an Interested Party

MRCC received the Amended Notice of Hearing that listed it as an interested party. Because MRCC did not have any members at the Old Detroit Free Press Jobsite, it requested removal from the case as an interested party (Ex 1(j)). The Regional Director denied MRCC's motion and also denied the request for an adjournment of the hearing.

C.) 10 (k) Hearing

On August 1, 2018, the NLRB held a 10(k) hearing with the following parties: The Parties to the proceeding included the Employer, Ram Construction Services of Michigan, Inc. (“Ram”); the Charged Party, the Michigan Laborers’ District Council (“Laborers”); Local 324, International Union of Operating Engineers (“Operators”); Local 2, International Union of Bricklayers & Allied Craftworkers (“BAC”); Local 149, United Union of Roofers, Waterproofers & Allied Workers (“Roofers”); and the Michigan Regional Council of Carpenters (“MRCC”).

NARRATIVE

A. Position of the Parties

At the hearing, the parties presented witnesses that advanced the following points. What is relevant to the MRCC is that all of the parties that testified – testified they did not have a dispute with the MRCC, that the MRCC could continue the *de minimis* use of power-driven and power-generated equipment, and that MRCC did not have a dispute with any of the other crafts or the Employer.

Ram: The employer argued for maintaining the status quo - in that it had the right to assign work to composite crews made of various trades. It determined the basis for the composition of the crew on the work that needed to be performed and the availability of workers. In relevant part, the Employer admitted that it did not have a dispute with the MRCC and had no intentions to change its assignment of work to MRCC.

Laborers: The Laborers argued that they received the assignment of work from Ram for most of the work performed by the Operators. This argument is supported by

letters and communications issued by Ram assigning them the work. Ram argued that the letters do not exclusively assign the work to Laborers (even though that's what the letters state), but are meant to maintain the status quo and not edge out the Operators.

Operators: The Operators argued for the maintenance of the status quo, with the exception that Operators should receive assignments more frequently. They argued at the hearing that they do not object to the assignment of their work to MRCC or anyone else on a *de minimus* basis, instead of on an exclusive basis. Indeed, during testimony, the Operators conceded that they did not dispute the assignment of work to MRCC or MRCC's use of power driven/generated equipment.

ARGUMENT

A.) There Is No Dispute With The MRCC

It is undisputed that no party claims to have a dispute with the MRCC. MRCC should not have been included as an interested party in this hearing. As stated more fully below, none of the elements to establish that Section 8(b)(4)(D) of the Act has been violated are present as to the MRCC or more broadly to any other party. Indeed, the Laborers removed the threat to strike/picket, as set forth in their June 7, 2018 letter. As the Board well knows, before proceeding with a determination on a dispute pursuant to Section 10(k) of the Act, there must be reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated. *Int'l Union of Operating Eng'rs Local 150*, 345 N.L.R.B. 1137, 1139 (2005). There was no 8(b)(4)(D) violation at the time of hearing – none of the elements of a Section 8(b)(4)(D) violation are present.

Finding reasonable cause of a Section 8(b)(4)(D) violation is a prerequisite before proceeding to determine a 10(k) dispute. *Theatrical Stage Employees Union*, 366 NLRB

No. 123 * 2 (2018). This requires that NLRB find reasonable cause to “believe that there are competing claims to the disputed work and that a party has used proscribed means to enforce its claim to the work in dispute.” *Id.* Proscribed means includes picketing or threatening to picket. In the instant matter, the ‘proscribed means’ has been withdrawn. Arguably, even a dispute over the work does not exist as none of the parties contend that a dispute exists, at least against the MRCC.

This is an important point as the Act provides jurisdiction in these matters over rival unions actively claiming competing work. *Operating Engineers, Local 4*, 363 NLRB No. 17 *3 (2015); *Highway Truckdrivers & Helpers, Local 107*, 134 NLRB 1320 (1961). In the instant matter, the MRCC is not a “rival union” because no dispute exists against the MRCC.

B.) The Decision Must Be Limited To The Old Detroit News Jobsite

The decision rendered in this matter must be limited to the jobsite and craft work as set forth in the July 13, 2018 Notice of Rescheduled Hearing:

The operation of all power-driven or power-generating construction equipment used in the building or alteration of all structures and engineering works in building, heavy construction and residential work, for the erection, operation, and maintenance of all hoisting and portable equipment, installation and operation of well point systems and freeze-pipe systems, involving the job performed by Ram Construction Services of Michigan, Inc., at its Detroit Free Press restoration job site located at 321 West Lafayette Blvd., Detroit, Michigan.

In *Operating Engineers, Local 3 (American Pipe & Construction Co.)*, 160 NLRB 1232, 1239 (1966), the Operating Engineers had argued for a jurisdictional decision to apply throughout the employer’s dispatching offices in northern California, but the Board limited the decision to assignment of disputed work at the San Francisco aqueduct project

in question. Similarly, in *Plasterers, Local 79 (Southwestern Construction Co.)* 167 NLRB 185, 188 (1967), the Tile Setters requested an award which would cover the whole United States or, alternatively, an order in the geographic area in which the employers operate. The Board ultimately limited the determination to the particular projects in which the instant dispute arose. As such, the decision in the instant case should only apply to the power-driven/power-generating equipment at the West Lafayette Blvd. Detroit Free Press project.

B. Use of Composite Crews

In the event the Board rules in favor of the Laborers in this matter, MRCC takes the position that the Board should preserve the status quo such that Carpenters share in the award of work. It is undisputed that the Carpenters participate in the composite crews, as testified to by several Ram Construction employees, as well as Laborers business manager Geno Alessandrini and the Operating Engineers witnesses. Further, the Laborers made clear that they are not claiming all of the work at issue. As such, any award of the work at issue to the Laborers should also include the Carpenters, Bricklayers, and Roofers based on past practice. See *J.A. Jones Construction*, 135 NLRB 1402, 1408-09 (1962).

CONCLUSION

For all of the above reasons, the NLRB should quash the Amended Notice of Hearing as a dispute over the work does not exist or alternatively issue a determination limited to the Old Detroit News Jobsite that maintains the status quo.

Respectfully submitted,

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DATED: August 24, 2018

CERTIFICATE OF SERVICE

I hereby certify that on August 24, 2018, I electronically filed the foregoing paper with the NLRB using their electronic filing system which will send notification to all parties of record.


David A. Malinowski